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21 April 1961

MEMORANDUM FOR THE RECORD

SUBJECT: Considerations in the Establishment of a Defense Intelligence Agency

GENERAL

On 2 March 1961, in response to a request by the Secretary of Defense, the JCS recommended establishment of a Defense Intelligence Agency (DIA) under the JCS. In commenting on the Chiefs' recommendation, many of the staff advisers of the Secretary of Defense questioned the desirability of placing the DIA under the JCS. Their concern centered about three distinct but interrelated issues:

1. Could the DIA perform its assigned functions under the JCS?
2. Would DIA be truly a consolidation of the DOD intelligence effort, or would it only amount to another agency loosely imposed on the existing intelligence structure of the Services?
3. Would DIA produce "military" as distinguished from "national" intelligence?

On 3 April 1961, the Secretary of Defense requested the JCS to develop the rationale underlying their original proposal of 2 March 1961, with particular regard to the three issues noted above. The memorandum also raised a series of associated subsidiary questions designed to more closely define the basic problem.

The JCS reply of 13 April 1961 sufficiently elaborated the proposal so that judgments can be offered.

With respect to the first two issues noted above, it is our opinion that should the DIA be placed under the JCS, it would be able to satisfactorily perform its functions as a truly consolidated intelligence agency. We base this opinion in part upon careful consideration of intent of the Chiefs' reply to the Secretary's request of 3 April

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and in part upon our conclusion that sufficient safeguards can be built into the charter of DIA to ensure the desired result.

THE ISSUE OF "NATIONAL" VERSUS "MILITARY"
INTELLIGENCE

The question has been raised whether a Defense Intelligence Agency placed under the JCS would satisfy the "national" intelligence responsibilities of the Secretary of Defense. This question appears to be based on a misconception of the intelligence responsibilities of the Department of Defense. According to the National Security Council Intelligence Directives (NSCID's) the DoD is not responsible for "national" intelligence; this is the responsibility of the Director of Central Intelligence supported by the United States Intelligence Board. The DoD, like other executive departments, is responsible for "departmental" intelligence. "Departmental" intelligence for the DoD has been defined by the NSCID's as "military" intelligence.

Pertinent excerpts (underlining added) from the NSCID's are:

1. "National intelligence is that intelligence which is required for the formulation of national security policy, concerns more than one department or agency, and transcends the exclusive competence of a single department or agency. The Director of Central Intelligence shall produce national intelligence with the support of the U. S. Intelligence Board. . . ." (NSCID No. 1)
2. "The Director of Central Intelligence shall disseminate national intelligence. . . ." (NSCID No. 1)
3. "Departmental intelligence is that intelligence which any department or agency requires to execute its own mission. . . ." (NSCID No. 1)
4. "The Department of Defense shall produce military intelligence. . . ." (NSCID No. 3)
5. "The Department of Defense shall have primary responsibility for . . . collection of military intelligence information . . ." (This includes scientific, technical and economic information directly pertinent to DoD missions.) (NSCID No. 2)

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THE ISSUE OF THE ORGANIZATIONAL LOCATION OF DIA

We have considered five possible alternatives for locating a DIA within the DoD:

1. Under the Joint Staff;
2. Under one of the military departments;
3. In the Office of the Secretary of Defense;
4. Under the JCS; and
5. Directly under the Chairman, JCS.

1. Assignment under the Joint Staff: This alternative is proscribed by statute. The National Security Act, as amended, specifically states that the Joint Staff "shall have no executive authority."

2. Assignment under one of the Military Departments: The McCormack Amendment would permit assigning DIA to one of the military departments. From a purely administrative point of view, this would be the simplest solution but we do not regard this as a desirable solution. Military intelligence is a defense-wide activity which employs many people and utilizes extensive facilities and resources in each of the military departments. More importantly, DoD intelligence activities are entwined with strategic planning and the operations of the unified and specified commands. Neither of these are responsibilities of the military departments. The assignment of DIA to one military department would introduce an additional complicating factor in the already complex relationships which exist between the unified commands, their components, and the military departments. Aside from this, it would be quite difficult to determine a basis for assignment of the Defense intelligence function to any particular military department, or to convince those who disagreed that such assignment was anything other than an arbitrary decision.

3. Assignment to the Office of the Secretary of Defense: This could be achieved by putting DIA under an Assistant Secretary of Defense, an Assistant to the Secretary of Defense, or by having the agency head report directly to the Secretary of Defense.

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- a. Advocates of this alternative state the Assistant Secretary or agency head could make the tough decisions on resources and management, which may be hard to develop and implement under the JCS system. It is further argued that this course of action would ensure "civilian" control. In short, this alternative alone it is contended would ensure the Secretary of Defense that the intelligence efforts of the DoD will be efficiently and forcefully conducted, yet always subject to his control.
 - b. Opponents of this alternative point to the fundamental principle that intelligence and military operations are inseparable. This principle is illustrated at the unified and specified command level and below, where both intelligence and operational considerations are integrated by the responsible commander and his staff; they are not separated. It is argued that the principle is equally valid at the Department of Defense level where strategic planning and direction are integrated by the Secretary of Defense, with the assistance of the Joint Chiefs of Staff. This process of integration is complex; it requires a large staff. It cannot be performed, it is said, when the staff responsibility for the intelligence function is separated from the staff responsibility for the operational function. In addition, this alternative would assign to a staff advisor of the Secretary operational responsibilities which are presently discharged by the unified command structure through the JCS.
 - c. A suggested variant of this alternative would designate a principal assistant to the Secretary of Defense as responsible for DoD intelligence "policy," but would assign the DIA to the JCS. We believe this is unsound since there is insufficient DoD intelligence "policy" to warrant appointment of a separate staff assistant for this purpose alone.
4. Assignment under the Joint Chiefs of Staff:
- a. The principal argument in favor of this alternative is that strategic planning and intelligence are so closely related that they cannot be separated. In addition it

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is argued that this alternative would implement approved recommendations of the Joint Study Group (Kirkpatrick) Report that the role and responsibilities of the JCS and unified and specified commanders in intelligence matters should be strengthened. Further, it would not involve a staff office of OSD in detailed operational matters. Finally, this alternative is the unanimous recommendation of the JCS and of the Secretaries of the three military departments.

- b. Opponents of this alternative consider that there is every evidence that the Department-wide intelligence function may suffer in effectiveness if subordinated to the Joint Chiefs of Staff. Instead of a real "union" of intelligence functions, a DIA under the JCS will develop into nothing more than a loose confederation of quasi-independent organizations, operating under an additional layer of administrative control. Furthermore, opponents fear that the JCS might inhibit the Director, DIA, from free and direct access to other components of DoD and to other organizations in the national intelligence community.

5. Assignment directly under the Chairman, Joint Chiefs of Staff:

- a. Under this alternative, DIA would report directly to the Chairman, JCS. This might eliminate the claimed deficiencies of "committee management" while keeping DIA closely connected with the JCS structure. Such a solution, however, would raise complex and far-reaching legal questions to which no definite answers can be given.
- b. 10 U. S. C. 142(c) provides, in part, that the Chairman "may not exercise military command over. . . any of the armed forces." It can be argued that placing DIA under the Chairman would violate this prohibition, but the issue is not as clear-cut as it appears on the surface. There are counter arguments.
- c. The legislative history of the phrase, "may not exercise command over. . . any of the armed forces" is not conclusive. In the first place "military command"

is not clearly defined. Congress apparently had in mind preventing "one military man from running the show for all the services." There is no evidence that Congress considered the problem in terms of placing a joint agency under the Chairman.

- d. Secondly, the meaning of the term "any of the armed forces" is ambiguous. Title 10, United States Code, defines "armed forces" as the Army, Navy, Air Force, Marine Corps, and Coast Guard. If the term "any" is construed to mean "any one" then DIA is not an armed force. Conversely, if the term is construed to mean "any part" then DIA, composed of military personnel, falls within the meaning of "any of the armed forces." As to this the legislative history is insufficient to clearly ascertain the intent of the Congress.
- e. A review of the Congressional comments and debates attending the passage of this legislation, however, leads to the conclusion that a strong argument could be made in support of the proposition that assignment of DIA to the Chairman would be contrary to the intent of the Congress.
- f. There remains a further legal possibility. Assuming arguendo that the Secretary of Defense is prohibited by law from assigning to the Chairman the authority over DIA that the Secretary considers essential, it can be argued that what the Secretary is prevented from doing by statute, the President could accomplish by executive order in the exercise of his Constitutional powers as Commander-in-Chief.
- g. Chief Justice Taney observed in the case of Fleming v. Page, 9 Howard 603, 618 (1850):

"As commander-in-chief, he the President is authorized to direct the movement of the naval and military forces placed by him at his command, and to employ them in any manner he may deem effective."

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- h. There are no cases, however, precisely in point as to whether the President as Commander-in-Chief would be bound by a statutory prohibition against the Chairman's exercising military command. This would present a grave Constitutional question. There are strong arguments pro and con.
- i. There is a further issue. Regardless of legal arguments many important Congressmen like Mr. Vinson are opposed to a single chief of staff for the armed forces. Placing DIA under the Chairman might be construed as a step toward a single chief of staff. Thus, the extremely sensitive problem of intelligence might be interjected into the political arena with adverse consequences.
- j. We question whether the advantages that could be attained by placing DIA under the Chairman, would merit the danger of involving the vital subject of intelligence in political controversy.

CONCLUSION AND RECOMMENDATION

None of the alternatives discussed above are wholly satisfactory. On balance, the choice is essentially between placing the DIA in OSD or placing it under the JCS. We believe that it should be placed under the JCS provided there are proper safeguards. Our principal reason is that the intelligence function is inextricably linked to the strategic planning responsibilities of the Joint Chiefs of Staff. By this standard, the DIA should be assigned to the JCS. We believe that this is the underlying principle upon which the JCS and the Secretaries of the Military Departments made their recommendations. Although we are mindful of the repeated argument that the JCS would not provide the kind of direction to the DIA which the Secretary of Defense would require, we consider placing DIA under the JCS to be a matter of principle, while the argument against is a matter of performance. We feel performance should be adjusted to accord with the principle -- not the converse. Certain specific authorities can be incorporated into the charter establishing the DIA to make sure the new organization will be completely responsive to intelligence needs of the entire Defense establishment. These include specifying the rank and powers of the Director, the functions of DIA, and ensuring that the Director will have free and unrestricted access to DoD components and to any other organization in the national intelligence community.

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If the Secretary of Defense approves the above recommendation we will provide the following implementing papers:



1. A memorandum for the JCS, the Secretaries of the Military Departments, and principal staff assistants of the Secretary outlining the approved concept and plan for the DIA.
2. A draft DoD Directive establishing the DIA with implementing memoranda.

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MEMORANDUM FOR THE SECRETARIES OF THE
MILITARY DEPARTMENTS
DIRECTOR OF DEFENSE RESEARCH
AND ENGINEERING
CHAIRMAN, JOINT CHIEFS OF STAFF
ASSISTANT SECRETARIES OF DEFENSE
GENERAL COUNSEL OF THE
DEPARTMENT OF DEFENSE
ASSISTANTS TO THE SECRETARY
OF DEFENSE

SUBJECT: Establishment of a Defense Intelligence Agency

1. After careful consideration of the issues and problems involved, I have decided to establish a Defense Intelligence Agency (DIA) reporting to me through the Joint Chiefs of Staff. Attached is a draft DoD Directive creating DIA.
2. The principal objectives in establishing a DIA are to obtain unity of effort among all components of the Department of Defense in developing military intelligence and a strengthening of the over-all capacity of the Department of Defense for the collection, production, and dissemination of intelligence information.
3. Although perhaps of lesser priority, but certainly not of lesser importance, are the objectives of obtaining a more efficient allocation of scarce intelligence resources, more effective management of all DoD intelligence activities, and the elimination of all duplicating facilities, organizations, and tasks.
4. I desire to emphasize my intent that DIA will fully integrate the intelligence resources and functions assigned to its control; it

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is not a confederation. " DIA will not be an additional layer of administrative control superimposed upon the top of the existing DoD intelligence organizations.

5. The draft Directive does not put all DoD intelligence and related activities in one organization. Special operations will remain the responsibility of an Assistant to the Secretary of Defense and COMINT, ELINT and COMSEC will remain the responsibility of NSA. While a major part of DoD intelligence activities will be brought under DIA, important activities such as counterintelligence, personnel and industrial security, and technical intelligence probably will continue to be conducted by the military departments under the coordination of DIA. The draft Directive, of necessity, cannot treat how these and other details of DIA are to be implemented. At the time the Directive is signed, I shall provide a mechanism for resolving such problems to the end that DIA may become fully operational as soon as possible. I regard this objective as a matter of the highest priority.

6. I approve on an interim basis the appointment and membership of a Military Intelligence Board (MIB), as outlined in the JCS concept and plan for a DIA, dated 2 March 1961, to act only as an advisory body to the Director, DIA. The MIB will meet on the call of the Director, DIA. When DIA has become fully operational I will reconsider the desirability and utility of continuing the MIB.

7. In light of the basic concepts and decisions outlined above, please submit your comments on the draft Directive to the General Counsel of the Department of Defense, by _____.

Secretary of Defense

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CONFIDENTIAL - 4 May 61
DECLASSIFIED - 4 Nov 61

DEPARTMENT OF DEFENSE DIRECTIVE

SUBJECT: Defense Intelligence Agency

- References:
- (a) DoD Directive 5148.4, "Assistant to the Secretary of Defense (Special Operations)"
 - (b) DoD Directive 5100.23, "Administrative Arrangements for the National Security Agency"
 - (c) DoD Directive 5100.1, "Functions of DoD and Its Major Components"
 - (d) DoD Directive C-2000.5
 - (e) DoD Directive S-5100.20
 - (f) DoD Directive C-5200.5

I. GENERAL

A. Pursuant to the authority vested in the Secretary of Defense and the provisions of the National Security Act of 1947, as amended, a Defense Intelligence Agency (DIA) is hereby established as an agency of the Department of Defense under the direction, authority and control of the Secretary of Defense.

B. Functions, Authorities, and Responsibilities assigned by references (b), (e), and (f) are excluded from the scope of this Directive.

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II. ORGANIZATION AND COMMAND

The Defense Intelligence Agency shall consist of:

A. A Director, a Deputy Director, a Chief of Staff, a headquarters establishment, and such subordinate units, facilities, and activities as are specifically assigned to the Agency by the Secretary of Defense or by the Joint Chiefs of Staff acting under the authority and direction of the Secretary of Defense.

B. Such subordinate organizations as are established by the Director, DIA, for the accomplishment of DIA's mission.

C. The chain of command shall run from the Secretary of Defense, through the Joint Chiefs of Staff to the Director, DIA. Guidance to the Director, DIA, shall be furnished by the Secretary of Defense, the Joint Chiefs of Staff acting under the authority and direction of the Secretary of Defense, and the United States Intelligence Board.

III. RESPONSIBILITIES

The Defense Intelligence Agency, under the direction and operational control of its Director, shall be responsible for:

A. The organization, direction, management, and control of all Department of Defense intelligence resources assigned to or included within the DIA.

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B. Review and coordination of those Department of Defense intelligence functions retained by or assigned to the military departments. Over-all guidance for the management of such functions will be developed by the Director, DIA, for review, approval, and promulgation by the Secretary of Defense.

C. Supervision of the execution of all approved plans, programs, policies, and procedures for intelligence functions not assigned to DIA.

D. Obtaining the maximum economy and efficiency in the allocation and management of Department of Defense intelligence resources. This includes analysis of those DoD intelligence activities and facilities which can be fully integrated or co-located with non-DoD intelligence organizations.

E. Responding directly to priority requests levied upon the Defense Intelligence Agency by USIB.

F. Satisfying the intelligence requirements of the major components of the Department of Defense.

IV. FUNCTIONS

Under its Director, the Defense Intelligence Agency shall perform the following functions:

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Contributions

A. Develop and produce all DoD intelligence *Contributions to NIEs & S/NIEs* [estimates] and DoD [information] for the United States Intelligence Board. Such estimates may indicate differences in analysis and evaluation.

B. Provide for the assembly, integration, and validation of all Department of Defense intelligence requirements and the assignment of relative priorities thereto; assign specific requirements to Department of Defense collection resources; and originate requests, when necessary, to non-Department of Defense collection resources to fulfill DoD requirements.

C. Establish a single DoD Collection Requirements Registry and Facility which will be fully compatible with any National Requirements Registry and Facility.

D. Provide programs, policies, and procedures for DoD collection activities.

E. Conduct such counterintelligence functions as may be subsequently assigned to DIA.

F. Provide for the integration of all Department of Defense current intelligence production.

G. Establish and maintain the DoD Indications Center.

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H. Conduct coordinating and planning activities to achieve the maximum economy and efficiency in the management of all Department of Defense intelligence activities.

I. Provide the Secretary of Defense, the staff assistants to the Secretary, the military departments, the Joint Chiefs of Staff, specialized DoD agencies, the unified and specified commands, and other organizations in the national intelligence community with military intelligence.

J. Provide DIA research and development requirements.

K. Develop plans for the integration of DoD intelligence and counterintelligence training programs, career development programs for intelligence personnel, general support programs, and other intelligence activities of the military departments.

L. Cooperate with the Central Intelligence Agency and other intelligence organizations for mutual support; common and combined usage of facilities, resources, and training programs; and elimination of duplication.

M. Provide in the person of the Director, DIA, one of the Department of Defense representatives to the United States Intelligence Board. *Others?*

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- N. Provide for DoD representation on USIB committees.
- O. Develop plans, programs, policies, and procedures to make the maximum use of the intelligence contributions of all attaches and MAAG's.
- P. Provide guidance, in conformance with USIB policies, to the major components of the Department of Defense on the public release of Defense intelligence information.
- Q. Develop plans, programs, policies, and procedures for intelligence mapping and charting activities.
- R. Develop common DoD systems and procedures for preparing and administering a consolidated budget for all DoD intelligence activities. Such systems and procedures shall be approved by the Assistant Secretary of Defense (Comptroller) before submission to the Secretary of Defense.
- S. Discharge such other intelligence functions as the Secretary of Defense or the Joint Chiefs of Staff may assign.

V. RELATIONSHIPS

- A. In the performance of its functions, the Defense Intelligence Agency shall:

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1. Coordinate actions as appropriate with the other components of the Department of Defense and with those departments and agencies of government having collateral or related functions in its field of assigned responsibilities.
2. Maintain appropriate liaison with the other components of the DoD and with the necessary departments and agencies of the government for the exchange of information and findings in the field of its assigned responsibility.

B. The military departments and other DoD components shall provide support, within their respective fields of responsibility, to the Director of the Defense Intelligence Agency as may be necessary to carry out the assigned responsibilities of the Agency.

VI. AUTHORITY

To discharge the responsibilities of the Agency, the Director, DIA, or his designees, are specifically delegated authority to:

1. Have free and unrestricted access to and direct communication with all elements of the Department of Defense and with any other organizations in the national intelligence community.

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2. Operate and control all organizations, activities, and resources assigned or attached to the Defense Intelligence Agency.
3. Establish DIA intelligence facilities, taking-over or using, wherever feasible, established facilities of the military departments.
4. Obtain such information from any component of the DoD as may be necessary for the performance of DIA's functions.
5. Supervise the execution of approved plans, programs, policies, and procedures for those DoD intelligence functions and activities not directly assigned to DIA.
6. Centralize or consolidate the functions for which DIA is responsible to the extent the Director deems feasible and desirable in consonance with the aims of maximum over-all efficiency, economy, and effectiveness.

VII. ADMINISTRATION

A. The appointment of all general and flag officers and civilian officials of comparable rank of the Agency shall be approved by the Secretary of Defense.

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B. The Director, Deputy Director, and Chief of Staff of the Defense Intelligence Agency shall be commissioned officers of the Armed Forces on active duty and normally shall be from different services. However, there shall be no established system of inter-Service rotation or designation for these key posts. The Director shall have at least three-star rank while serving in this position.

C. The Defense Intelligence Agency will be authorized such personnel, facilities, funds, and other administrative support as the Secretary of Defense deems necessary for the performance of its functions. The military departments and other DoD components shall provide support as necessary for the Agency. Budgeting and funding for the Agency will be in conformance with policies established by the Assistant Secretary of Defense (Comptroller).

D. The assignment of personnel to the Agency will be subject to the approval of the Director, DIA.

VIII. EFFECTIVE DATE

This Directive is effective upon publication. All components of the Department of Defense will review their existing directives, instructions, and regulations for conformity with this Directive and submit necessary amendments thereto to the General Counsel of the Department of Defense within 90 days.

Secretary of Defense

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